

### **Remarks**

Claims 1-22 are pending. Claims 1-10 are shown as "withdrawn" status due to previous restriction requirement and election. Claims 11 and 17 are previously amended. No amendments are presented via this paper.

Pursuant to 37 C.F.R. § 1.116, reconsideration of the present application in view of the following remarks is respectfully requested.

On page 2 of the Office Action mailed November 30, 2006, the claims 11-22 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 5,804,021 to Abuto et al. (hereinafter "Abuto et al.") or alternatively under 35 U.S.C. § 103(a) as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over Abuto et al., "as set forth in the Office Action mailed April 20, 2006". This rejection is hereby **traversed** to the extent it may apply to the currently presented claims.

The invention as claimed in claim 11 is drawn to a cross machine direction extensible nonwoven web consisting essentially of continuous thermoplastic fibers and a plurality of thermal bond points in a pattern. The continuous thermoplastic fibers have an average diameter greater than about 10 microns, the nonwoven web has a substantially uniform basis weight, and the force required to extend the bonded nonwoven web 30 percent in the cross machine direction is less than about 60 percent of the cross machine direction peak tensile force of the bonded nonwoven web.

The invention as claimed in claim 17 is drawn to a cross machine direction extensible nonwoven web consisting essentially of continuous thermoplastic fibers and a plurality of thermal bond points in a pattern. The continuous thermoplastic fibers have an average diameter greater than about 10 microns, the nonwoven web has a substantially uniform basis weight, and the force required to extend the bonded nonwoven web 30 percent in the cross machine direction is less than about 30 percent of the force required to extend the web to 30 percent in the machine direction.

As noted in the Application Specification at page 2, lines 31-34, there is a need for cross machine direction extensible nonwoven web materials which exhibit the cross machine direction extensibility without the requirement of having had one or more post-processing steps applied to the nonwoven web material. Such post processing steps act to create

physical structure in the web material that is capable of enabling the provision of extensibility.

As stated in the Office Action dated April 20, 2006 (by reference in the Office Action dated November 30, 2006), the Abuto et al. reference discloses a fibrous nonwoven laminate material exhibiting elasticity in at least one direction. However, relevant to the instant invention, the nonwoven web facing layer taught by Abuto et al. is an example of a post-processed web wherein the extensibility is increased in particular due to the structure present in the web material as created via a post-processing operation. More particularly, Abuto et al. provide for the extensibility to be increased because the webs contain a plurality of slits through the nonwoven material. In contrast, independent claims 11 and 17 as claimed require that the nonwoven web consist essentially of continuous fibers.

As taught in Abuto et al., the additional web structural elements such as the slits which provide extensibility are provided as a plurality of slits that are in generally parallel rows. The generally parallel rows of slits extend from edge to edge of the material. As such, Applicants submit that the fibrous nonwoven layer disclosed in Abuto et al. would not consist essentially of continuous fibers. Rather, Applicants submit that the provision of the plurality of slits would produce a fibrous nonwoven web having at least a substantial number of discontinuous fibers at the slits, and therefore, the slit apertured webs of Abuto et al. do not disclose and cannot therefore anticipate a web "consisting essentially of" continuous fibers. Applicants respectfully submit that this is clearly a material difference in the actual structure of the instant material vs. the materials taught by Abuto et al. Contrariwise, and to the Examiner's question of how the claims have been further limited, the inventive material consisting essentially of continuous fibers does not include within the scope such a material having a plurality of slits, because this would mean a fibrous nonwoven web having many discontinuous fibers at the positions of the slits across the nonwoven web material.

Additionally, it was stated in the Office Action mailed November 30, 2006 that the Applicants' prior similar arguments relating to the fact that, as claimed, their inventive web consists essentially of continuous fibers are not persuasive because,

It is not seen how this limits the present claims as the present claims are drawn to an article and not a process. Further it is not seen that the slits provided by Abuto take away from the basic and novel characteristics of the web claimed here. Like the material claimed here the Abuto material has the requisite extensibility of the present claims.

Applicants submit that this reply misapprehends the reasoning underlying Applicants' arguments. Applicants agree that they are not currently claiming a process. Rather, Applicants submit that their claim limitation – the nonwoven web consisting essentially of continuous thermoplastic fibers – is clearly a structural limitation and not a process limitation. Furthermore, it is a structural limitation clearly neither anticipated by, nor obvious over, the teachings of Abuto et al. Please consider that the fibrous webs of Abuto et al. are made extensible because the fibrous webs have been slit (cut). Therefore, an extensible web consisting essentially of continuous thermoplastic fibers as claimed by Applicants – non-cut fibers – can not be made non-novel by a web teaching that it has extensibility via the provision of slits/cuts through the web (and, necessarily, through the fibers of that web).

Stated another way, to remove the slits in the webs taught by Abuto et al., i.e., to modify them to make them capable of being read upon by the "consisting essentially of continuous thermoplastic fibers" element as claimed by Applicants, would render the webs of Abuto et al. incapable of the extensibility required for their stated and intended purpose. According to M.P.E.P. §2143.01, referring to *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984), a "proposed modification cannot render the prior art unsatisfactory for its intended purpose". Applicants respectfully submit that one skilled in the art would not make such a modification, and if one did, Applicants submit the webs of Abuto et al. would not work as required. Therefore, Applicants respectfully submit that according to M.P.E.P. §2143.01, the rationale supplied by the Office for its rejection of Applicants' claims is untenable.

Furthermore, please note that according to M.P.E.P. §2144.04, referring to *In re Edge*, 359 F.2d 896, 149 USPQ 556 (CCPA 1966), "the omission of an element and retention of its function is an indicia of unobviousness". Here, the Applicants claims omit the web structure taught by Abuto et al. (slits), yet still retain the extensibility made possible by that structure.

Therefore, Applicants respectfully submit that also according to M.P.E.P. §2144.04, the rationale supplied by the Office for its rejection of Applicants' claims is untenable.

Therefore, for the reasons stated above, because the Abuto et al. does not teach (or, alternatively, suggest) all of the parameters or elements of Applicants' claims, Applicants respectfully submit that the rejection of claims 11-22 under 35 U.S.C. §102(b) (alternatively under 35 U.S.C. § 103(a)) should be withdrawn and favorable action on the pending claims is respectfully requested.

As a final matter, Applicants note that in the prior rejection mailed April 20, 2006 (which was repeated by reference thereto in the current Office Action/rejection), several of the claims elements recited above with respect to claims 11 and 17 (elements relating to forces required to extend the web in cross-machine direction and the machine direction) were alleged to be inherently disclosed by the Abuto et al. reference. Although Applicants do not necessarily agree with these assertions of inherency, Applicants have not at this time attempted to produce the webs described in Abuto et al. in order to procure testing against the claims limitations involved, particularly in view of their arguments above demonstrating novelty and non-obviousness of their claims over the teachings of Abuto et al. for these other reasons stated.

The Examiner is encouraged to call the undersigned at her convenience, should any issues be believed to remain.

The undersigned may be reached at: 770-587-8908.

Respectfully submitted,

REBECCA W. GRIFFIN ET AL.

By: /Robert A. Ambrose/

Robert A. Ambrose

Registration No.: 51,231

#### CERTIFICATE OF TRANSMISSION

I, Robert A. Ambrose, hereby certify that on February 28, 2007, this document is being transmitted to the United States Patent and Trademark Office via the EFS-Web System.

By: /Robert A. Ambrose/

Robert A. Ambrose